

AMENDED IN SENATE APRIL 1, 2004

SENATE BILL

No. 1818

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Introduced by ~~Senators Ducheny and Hollingsworth~~ Senator  
Hollingsworth  
(Principal coauthor: Senator Ducheny)

February 20, 2004

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An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, as amended, ~~Ducheny~~ Hollingsworth. Density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements, including a requirement that the applicant agree or propose to construct a specified percentage of the total units for specified income households or qualifying residents. Existing law also requires an additional density bonus or additional concession or incentive to be granted to a developer of housing that meets those requirements and includes a child care facility, as defined, subject to specified conditions.

This bill would revise the above-described ~~develop requirements~~ provision to, among other things, ~~reduce the percentage of the total units for specified income households or qualifying residents, as specified~~ require, when a developer seeks a density bonus for a housing development within, or for the donation of land within, the jurisdiction of the local government, that the local government provide a density

*bonus or other incentives or concessions for the production of housing units and child care facilities, as specified. By increasing its duties of local officials, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 65915 of the Government Code is  
2 amended to read:

3 65915. (a) When an applicant ~~proposes a housing~~  
4 ~~development within~~ *seeks a density bonus for a housing*  
5 *development within, or for the donation of land for housing within,*  
6 the jurisdiction of a city, county, or city and county, that local  
7 government shall provide the applicant incentives or concessions  
8 for the production of housing units and child care facilities as  
9 prescribed in this chapter. All cities, counties, or cities and counties  
10 shall adopt an ordinance that specifies how compliance with this  
11 section will be implemented.

12 (b) A city, county, or city and county shall either grant a density  
13 bonus and at least one of the concessions or incentives identified  
14 in subdivision ~~(k)-(l)~~, or provide other incentives or concessions  
15 of equivalent financial value based upon the land cost per dwelling  
16 unit, when the applicant for the housing development ~~agrees or~~  
17 ~~proposes~~ *seeks and agrees* to construct at least any one of the  
18 following:

19 (1) Ten percent of the total units of a housing development for  
20 lower income households, as defined in Section 50079.5 of the  
21 Health and Safety Code.

(2) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) Twenty-five percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code.

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, *or in a planned development as defined in subdivision (k) of*, Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for ~~20-30~~ years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 20 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed ~~20-30~~ percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and ~~county shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for five years if the housing is in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code.~~ *county shall ensure that the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the condominium project as defined in subdivision (f) of, or in the planned unit development as defined in subdivision*

1 *(k) of, Section 1351 of the Civil Code, are persons and families of*  
2 *moderate income, as defined in Section 50093 of the Health and*  
3 *Safety Code. Upon resale, the seller of the unit shall retain the*  
4 *value of any improvements, the downpayment, and the seller's*  
5 *proportionate share of appreciation. Any recaptured subsidy shall*  
6 *be segregated and used within one year only for density bonus*  
7 *units in a condominium project or planned development.*

8 (d) An applicant may submit to a city, county, or city and  
9 county a proposal for the specific incentives or concessions that the  
10 applicant requests pursuant to this section, and may request a  
11 meeting with the city, county, or city and county. The city, county,  
12 or city and county shall grant the concession or incentive requested  
13 by the applicant unless the city, county, or city and county makes  
14 a written finding, based upon substantial evidence, of either of the  
15 following:

16 (1) The concession or incentive is not required in order to  
17 provide for affordable housing costs, as defined in Section  
18 50052.5 of the Health and Safety Code, or for rents for the targeted  
19 units to be set as specified in subdivision (c).

20 (2) The concession or incentive would have a specific adverse  
21 impact, as defined in paragraph (2) of subdivision (d) of Section  
22 65589.5, upon public health and safety or the physical  
23 environment or on any real property that is listed in the California  
24 Register of Historical Resources and for which there is no feasible  
25 method to satisfactorily mitigate or avoid the specific adverse  
26 impact without rendering the development unaffordable to low-  
27 and moderate-income households.

28 The applicant may initiate judicial proceedings if the city,  
29 county, or city and county refuses to grant a requested density  
30 bonus, incentive, or concession. If a court finds that the refusal to  
31 grant a requested density bonus, incentive, or concession is in  
32 violation of this section, the court shall award the plaintiff  
33 reasonable attorney's fees and costs of suit. Nothing in this  
34 subdivision shall be interpreted to require a local government to  
35 grant an incentive or concession that has a specific, adverse  
36 impact, as defined in paragraph (2) of subdivision (d) of Section  
37 65589.5, upon health, safety, or the physical environment, and for  
38 which there is no feasible method to satisfactorily mitigate or  
39 avoid the specific adverse impact. Nothing in this subdivision shall  
40 be interpreted to require a local government to grant an incentive

or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least ~~25~~ 12.5 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the



1 applicant to the city, county, or city and county. *The amount of*  
2 *density bonus to which the applicant is entitled shall vary*  
3 *according to the amount by which the percentage of affordable*  
4 *housing units exceeds the percentage established in subdivision*  
5 *(b). For each 1 percent increase above 10 percent in the percentage*  
6 *of units affordable to lower income households, the density bonus*  
7 *shall be increased by 1.5 percent up to a maximum of 40 percent.*  
8 *For each 1 percent increase above 5 percent in the percentage of*  
9 *units affordable to very low income households, the density bonus*  
10 *shall be increased by 2.5 percent up to a maximum of 40 percent.*  
11 *For each 1 percent increase above 25 percent in the percentage of*  
12 *units affordable to seniors, the density bonus shall be increased by*  
13 *1 percent up to a maximum of 40 percent.* All density calculations  
14 resulting in fractional units shall be rounded up to the next whole  
15 number. The granting of a density bonus shall not be interpreted,  
16 in and of itself, to require a general plan amendment, local coastal  
17 plan amendment, zoning change, or other discretionary approval.  
18 The density bonus shall not be included when determining the  
19 number of housing units that is equal to ~~10, 20, or 50~~ 5, 10, or 25  
20 percent of the total. The density bonus shall apply to housing  
21 developments consisting of five or more dwelling units.

22 (2) For the purposes of this chapter, if a development does not  
23 meet the requirements of paragraph (1), (2), or (3) of subdivision  
24 (b), but the applicant agrees or proposes to construct a  
25 condominium project as defined in subdivision (f) of, *or a planned*  
26 *development as defined in subdivision (k) of*, Section 1351 of the  
27 Civil Code, in which at least ~~20~~ 10 percent of the total dwelling  
28 units are reserved for persons and families of moderate income, as  
29 defined in Section 50093 of the Health and Safety Code, a “density  
30 bonus” of at least ~~40~~ 5 percent shall be granted, unless a lesser  
31 percentage is elected by the applicant, over the otherwise  
32 maximum allowable residential density under the applicable  
33 zoning ordinance and land use element of the general plan as of the  
34 date of application by the applicant to the city, county, or city and  
35 county. *For each 1 percent increase above 10 percent of the*  
36 *percentage of units affordable to moderate-income households,*  
37 *the density bonus shall be increased by 1 percent up to a maximum*  
38 *of 40 percent.* All density calculations resulting in fractional units  
39 shall be rounded up to the next whole number. The granting of a  
40 density bonus shall not be interpreted, in and of itself, to require



a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units that is equal to 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) *When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city or county as provided for in this subdivision, the applicant shall be entitled to a 15 percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, including the maximum allowable residential density on any development on donated land within the site. This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 40 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:*

(1) *The applicant offers no later than 60 days prior to approval of the application to donate the land no later than 60 days after approval of the final map, parcel map, or residential development application.*

(2) *The developable acreage and zoning classification of the land being donated are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development, assuming a residential density of 20 units per acre on the land to be donated.*

(3) *The donated land is appropriately zoned for development as affordable housing and served by adequate public facilities and infrastructure. The land shall have appropriate multifamily zoning and development standards to make the development of the affordable units feasible. The units shall be developable by right, as defined in paragraph (1) of subdivision (c) of Section 65583.*

(4) *The donated land and the affordable units shall be subject to a deed restriction insuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c) of, and*

1 paragraphs (1) and (2) of subdivision (g) of, Section 6595, that  
2 shall be recorded on the property at the time of dedication.

3 (5) The land is donated to the local agency or to a housing  
4 developer approved by the local agency.

5 (6) Donated land shall be within the boundary of the proposed  
6 development or, if the local agency agrees, within one-quarter mile  
7 of the boundary of the proposed development.

8 (i) (1) When an applicant proposes to construct a housing  
9 development that conforms to the requirements of subdivision (b)  
10 and includes a child care facility that will be located on the  
11 premises of, as part of, or adjacent to, the project, the city, county,  
12 or city and county shall grant either of the following:

13 (A) An additional density bonus that is an amount of square feet  
14 of residential space that is equal to or greater than the amount of  
15 square feet in the child care facility.

16 (B) An additional concession or incentive that contributes  
17 significantly to the economic feasibility of the construction of the  
18 child care facility.

19 (2) The city, county, or city and county shall require, as a  
20 condition of approving the housing development, that the  
21 following occur:

22 (A) The child care facility shall remain in operation for a period  
23 of time that is as long as or longer than the period of time during  
24 which the density bonus units are required to remain affordable  
25 pursuant to subdivision (c).

26 (B) Of the children who attend the child care facility, the  
27 children of very low income households, lower income  
28 households, or families of moderate income shall equal a  
29 percentage that is equal to or greater than the percentage of  
30 dwelling units that are required for very low income households,  
31 lower income households, or families of moderate income  
32 pursuant to subdivision (b).

33 (3) Notwithstanding any requirement of this subdivision, a  
34 city, county, or a city and county shall not be required to provide  
35 a density bonus or concession for a child care facility if it finds,  
36 based upon substantial evidence, that the community has adequate  
37 child care facilities.

38 (4) "Child care facility," as used in this section, means a child  
39 day care facility other than a family day care home, including, but





1 not limited to, infant centers, preschools, extended day care  
2 facilities, and schoolage child care centers.

3 ~~(i)~~

4 (j) “Housing development,” as used in this section, means one  
5 or more groups of projects for residential units constructed in the  
6 planned development of a city, county, or city and county. For the  
7 purposes of this section, “housing development” also includes  
8 either (1) a project to substantially rehabilitate and convert an  
9 existing commercial building to residential use, or (2) the  
10 substantial rehabilitation of an existing multifamily dwelling, as  
11 defined in subdivision (d) of Section 65863.4, where the result of  
12 the rehabilitation would be a net increase in available residential  
13 units. For the purpose of calculating a density bonus, the  
14 residential units do not have to be based upon individual  
15 subdivision maps or parcels. The density bonus shall be permitted  
16 in geographic areas of the housing development other than the  
17 areas where the units for the lower income households are located.

18 ~~(j)~~

19 (k) The granting of a concession or incentive shall not be  
20 interpreted, in and of itself, to require a general plan amendment,  
21 local coastal plan amendment, zoning change, or other  
22 discretionary approval. This provision is declaratory of existing  
23 law.

24 ~~(k)~~

25 (l) For the purposes of this chapter, concession or incentive  
26 means any of the following:

27 (1) A reduction in site development standards or a modification  
28 of zoning code requirements or architectural design requirements  
29 that exceed the minimum building standards approved by the  
30 California Building Standards Commission as provided in Part 2.5  
31 (commencing with Section 18901) of Division 13 of the Health  
32 and Safety Code, including, but not limited to, a reduction in  
33 setback and square footage requirements and in the ratio of  
34 vehicular parking spaces that would otherwise be required *that*  
35 *results in identifiable, financially sufficient, and actual cost*  
36 *reductions.*

37 (2) Approval of mixed use zoning in conjunction with the  
38 housing project if commercial, office, industrial, or other land uses  
39 will reduce the cost of the housing development and if the  
40 commercial, office, industrial, or other land uses are compatible

1 with the housing project and the existing or planned development  
2 in the area where the proposed housing project will be located.

3 (3) Other regulatory incentives or concessions proposed by the  
4 developer or the city, county, or city and county that result in  
5 identifiable, *financially sufficient*, and actual cost reductions.

6 This subdivision does not limit or require the provision of direct  
7 financial incentives for the housing development, including the  
8 provision of publicly owned land, by the city, county, or city and  
9 county, or the waiver of fees or dedication requirements.

10 ~~(l)~~—

11 (m) If an applicant agrees to construct both 20 percent of the  
12 total units for lower income households and 10 percent of the total  
13 units for very low income households, the developer is entitled to  
14 only one density bonus and at least one additional concession or  
15 incentive identified in Section 65913.4 under this section although  
16 the city, county, or city and county may, at its discretion, grant  
17 more than one density bonus.

18 ~~(m)~~—

19 (n) Nothing in this section shall be construed to supersede or in  
20 any way alter or lessen the effect or application of the California  
21 Coastal Act (Division 20 (commencing with Section 30000) of the  
22 Public Resources Code).

23 ~~(n)~~—

24 (o) A local agency may charge a fee to reimburse it for costs it  
25 incurs as a result of amendments to this section enacted during the  
26 2001–02 Regular Session and 2003–04 Regular Sessions of the  
27 Legislature.

28 ~~(o)~~—

29 (p) For purposes of this section, the following definitions shall  
30 apply:

31 (1) “Development standard” means any ordinance, general  
32 plan element, specific plan, charter amendment, or other local  
33 condition, law, policy, resolution, or regulation.

34 (2) “Maximum allowable residential density” means the  
35 density allowed under the zoning ordinance, or if a range of  
36 density is permitted, means the maximum allowable density for  
37 the specific zoning range applicable to the project.

38 SEC. 2. Notwithstanding Section 17610 of the Government  
39 Code, if the Commission on State Mandates determines that this  
40 act contains costs mandated by the state, reimbursement to local

1 *agencies and school districts for those costs shall be made*  
2 *pursuant to Part 7 (commencing with Section 17500) of Division*  
3 *4 of Title 2 of the Government Code. If the statewide cost of the*  
4 *claim for reimbursement does not exceed one million dollars*  
5 *(\$1,000,000), reimbursement shall be made from the State*  
6 *Mandates Claims Fund.*

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